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#3

PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants	Kay et al.	Examiner:	Unassigned
Serial No.:	10/017,478	Group Art Unit:	1615
Confirm. No:	5212	Docket:	1040-3
Filed:	December 14, 2001	Dated:	April 3, 2002
For:	MAGNESIUM PLUS INTERACTIVE AGENT DELIVERY		

Commissioner for Patents
Washington, DC 20231

**PETITION PURSUANT TO 37 C.F.R. §1.47
TO ACCEPT A DECLARATION WHEN
ONE OF THE JOINT INVENTORS REFUSES TO SIGN**

Sir:

1. The above-identified application was filed without formal papers on December 14, 2001.
2. Each of the two joint inventors, including Mr. Robert A Kay, were employed by Leiner Health Products, Inc. ("Leiner") during the time the invention was conceived. Mr. Kay subsequently left the employment of Leiner prior to the filing of the application.
3. Mr. Kay was contacted both before the filing of the application and thereafter in order to obtain his signature on the Declaration.
4. On March 5, 2002, Leiner's outside patent counsel, Hoffmann & Baron, LLP sent a Declaration and Power of Attorney to Mr. Kay for signature at 16253 Incline Court, LaMirada, CA 90638 by Federal Express. Thereafter, Leiner's patent counsel spoke to Mr. Kay on at least three occasions about the application and the Declaration and Power of Attorney which was sent to him for signature. Mr. Kay stated that he had received the

Declaration and Power of Attorney but would not sign the document because of business disagreements with Leiner.

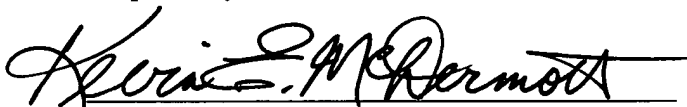
5. A Declaration by Kevin E. McDermott is filed herewith and details the efforts undertaken by Leiner's outside patent counsel to have Mr. Kay execute the Declaration and Power of Attorney.

6. The other joint inventor, Larry K. Thomas, has executed the Combined Declaration and Power of Attorney which is being filed herewith in response to a Notice of Missing Parts mailed January 9, 2002..

7. Accordingly, Petitioner respectfully requests that the Declaration and Power of Attorney be accepted and the Response to the Notice To File Missing Parts be deemed completed.

8. A check in the amount of \$130.00 is enclosed herewith for the fee associated with this petition under 37 C.F.R. 1.17(i). Authority is also given to charge Deposit Account No. 08-2461 for any additional fee associated with this Petition. A duplicate copy of this sheet is enclosed for that purpose.

Respectfully submitted,



Kevin E. McDermott
Registration No.: 35,946
Attorney for Applicants

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(516) 822-3550
151733_1

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	Kay et al.	Examiner:	Unassigned
Serial No.:	10/017,478	Group Art Unit:	1615
Confirm. No:	5212	Docket:	1040-3
Filed:	December 14, 2001	Dated:	April 3, 2002
For:	MAGNESIUM PLUS INTERACTIVE AGENT DELIVERY		

Commissioner for Patents
Washington, DC 20231

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DECLARATION OF KEVIN E. McDERMOTT
IN SUPPORT OF PETITION PURSUANT TO 37 C.F.R. § 1.47

1. I am an associate with the law firm of Hoffmann & Baron, LLP, the outside patent counsel for Leiner Health Products, Inc. ("Leiner") in the above-referenced patent application.
2. I am a registered patent attorney and my registration number is 35,946.
3. Mr. Robert A. Kay is an inventor on the above-identified patent application and was an employee of Leiner at the time of the invention.
4. The patent application was filed on December 14, 2001, without the Declaration and Power of Attorney.
5. Mr. Kay terminated his employment with Leiner prior to the filing of the application.
6. On March 5, 2002, I sent a letter to Mr. Kay enclosing a copy of the Declaration and Power of Attorney document for review and signature. The document was sent to Mr. Kay's home at 16253 Incline Court, LaMirada, CA 90638 by Federal Express.

This address was provided to me by Mr. Kay during a previous telephone conversation. A copy of the letter is attached hereto as Exhibit A.

7. On March 7, 2002, I spoke to Mr. Kay on the telephone and he stated that he had received the Declaration and Power of Attorney. However, he expressed reservations about signing the document since he did not want to assign any rights that he may have in the invention to Leiner. Accordingly, Mr. Kay asked me to send him a letter by facsimile which would confirm that the Declaration and Power of Attorney did not transfer any property rights in the invention. A copy of the letter is attached as Exhibit B.

8. On March 21, 2002, I spoke to Mr. Kay on the telephone to ascertain whether or not he had signed the Declaration and Power of Attorney. Mr. Kay stated that he had not and that he would not be signing the document because he had not been able to resolve certain business disagreements with Leiner.

9. I hereby declare that all the statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the likes that are made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful and false statements may jeopardize the validity of the application or any patent issued therefrom.

Dated: April 3, 2002


Kevin E. McDermott

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HOFFMANN & BARON, LLP

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OF COUNSEL

ROBERT M. RODRICK*

SCIENTIFIC ADVISOR

DANIEL A. SCOLA, SR., Ph.D.

* NOT ADMITTED IN N.Y.

† SENIOR ATTORNEY

March 5, 2002

VIA FEDERAL EXPRESS

344 4780 464 Kay

344 4780 726 Thomas

Robert A. Kay
16253 Incline Court
LaMirada, CA 90638

Re: U. S. Patent Application Serial No. 10/017,478
"Calcium/Magnesium Solid Dosage Product With
Intestinal Release of Magnesium"
Our Docket: 1040-3

Dear Bob:

Pursuant to our telephone conversation, enclosed is a Combined Declaration and Power of Attorney for your signature. Please sign and date the document (your signature does not have to be notarized) on page 4 and forward it via the enclosed Federal Express envelope to Larry Thomas for his signature.

The response to the Patent Office's Notice to File Missing Parts is due to be filed on March 11, 2002. Therefore, we request that you proceed as quickly as possible.

If you have any questions concerning this matter, please contact us at your convenience.

Sincerely,

Kevin E. McDermott

KEM:kd
Enclosure
150392_1

EXHIBIT A

HOFFMANN & BARON, LLP

ATTORNEYS AT LAW

CHARLES R. HOFFMANN
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PATENT AGENTS

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LINDA T. PARKER, Ph.D.

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EDNA I. GERGEL, Ph.D.

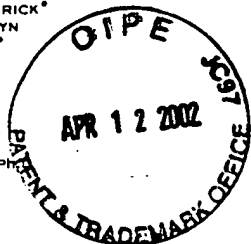
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CONFIRMATION

March 7, 2002

VIA FACSIMILE

(949) 609-4031

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OF COUNSEL

ROBERT M. RODRICK*

SCIENTIFIC ADVISOR

DANIEL A. SCOLA, SR., Ph.D.

* NOT ADMITTED IN N.Y.

† SENIOR ATTORNEY

Robert A. Kay
16253 Incline Court
LaMirada, CA 90638

Re: U. S. Patent Application Serial No. 10/017,478
"Calcium/Magnesium Solid Dosage Product With
Intestinal Release of Magnesium"
Our Docket: 1040-3

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OFFICE OF PETITIONS

Dear Bob:

This will confirm our telephone conversation of earlier today. The Combined Declaration and Power of Attorney, which we have asked you to execute, will not transfer any ownership rights you may have in the above-referenced patent application. The Combined Declaration and Power of Attorney simply allows us to prosecute the application in the Patent and Trademark Office.

If you have any questions concerning this matter, please contact us at your convenience.

Sincerely,

Kevin E. McDermott

cc: Lisa Steen Proctor, Esq.
Leiner Health Products

KEM:kd
150581_1

EXHIBIT B

Attorney's Docket No. 1040-3

PATENT

COMBINED DECLARATION AND POWER OF ATTORNEY(ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL,
DIVISIONAL, CONTINUATION OR CIP)

As a below named inventor, I hereby declare that:

TYPE OF DECLARATIONThis declaration is of the following type: *(check one)*

- ☒ Original
☐ Supplemental
☐ Design

- ☐ National Stage PCT
☐ Divisional
☐ Continuation
☐ Continuation-in-Part (CIP)

INVENTORSHIP IDENTIFICATION

NOTE: If the inventors are each not the inventors of all the claims an explanation of the facts, including the ownership of all the claims at the time the last claimed invention was made, should be submitted.

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

MAGNESIUM PLUS INTERACTIVELY AGENT DELIVERYthe specification of which: *(complete (a), (b) or (c))*

- (a) ☐ is attached hereto.
- (b) ☒ was filed on December 14, 2001 as
☒ Serial No. 10/017,478 or
☐ Express Mail No. _____, as Serial No. not yet known
and was amended on _____. *(If applicable)*
- (c) ☐ was described and claimed in PCT International Application No. PCT/
filed on _____ and as amended under PCT Article 19 on _____. *(If any)*

RECEIVED**APR 17 2002****OFFICE OF PETITIONS****ACKNOWLEDGMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR**

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above, and that the filing of said specification, if heretofore filed, was authorized by me.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, §1.56(a).

CLAIM OF PRIORITY OF EARLIER FOREIGN APPLICATION(S) UNDER 35 U.S.C. §119(a)-(d)

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed:

(List prior foreign/PCT application(s) filed within 12 months (6 months for design) prior to this U.S. application.)

NOTE: Where item (c) is entered above and the International Application which designated the U.S. claimed priority check item (e), enter the details below and make the priority claim.

COUNTRY (orPCT)	APPLICATION NO.	DATE OF FILING (Day/Month/Year)	PRIORITY CLAIMED UNDER 35 USC §119
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO

CLAIM FOR BENEFIT OF PRIOR U.S. PROVISIONAL APPLICATION(S) UNDER 35 U.S.C. §119(e)

I hereby claim the benefit under Title 35, United States Code, §119(e) of any United States provisional application(s) listed below:

(List prior U.S. provisional applications.)

PROVISIONAL APPLICATION NO.	FILING DATE (Day/Month/Year)
60/255,616	14/12/2000

CLAIM FOR BENEFIT OF EARLIER U.S./PCT APPLICATION(S) UNDER 35 U.S.C. 120

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) or PCT international application(s) designating the United States of America that is/are listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in such prior application(s) in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56(a) which occurred between the filing date of the prior application(s) and the national or PCT international filing date of this application:

(List prior U.S. applications or PCT international applications designating the U.S. for benefit under 35 U.S.C. §120.)

U.S. APPLICATIONS		STATUS (Check One)		
U.S. SERIAL NO.	U.S. FILING DATE (Day/Month/Year)	Patented	Pending	Abandoned
0 /		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
0 /		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PCT APPLICATIONS DESIGNATING THE U.S.			STATUS (Check One)		
PCT APPLN. NO.	PCT FILING DATE (Day/Month/Year)	U.S. SERIAL NOS ASSIGNED (If any)	Patented	Pending	Abandoned
PCT/			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PCT/			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

35 USC 119 PRIORITY CLAIM, IF ANY, FOR ABOVE LISTED U.S./PCT APPLICATIONS

PRIORITY APPLICATION NO.	PRIORITY COUNTRY	FILING DATE (Day/Month/Year)	ISSUE DATE (Day/Month/Year)

POWER OF ATTORNEY

As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office in connection therewith:

Charles R. Hoffmann, Reg. No. 24,102; Ronald J. Baron, Reg. No. 29,281; Gerald T. Bodner, Reg. No. 30,449; Alan M. Sack, Reg. No. 31,874; A. Thomas Kammer, Reg. No. 28,226; R. Glenn Schroeder, Reg. No. 34,720; Glenn T. Henneberger, Reg. No. 36,074; Irving N. Feit, Reg. No. 28,601; Anthony E. Bennett, Reg. No. 40,910; Gregory W. Bachmann, Reg. No. 41,593; Steven T. Zuschlag, Reg. No. 43,309; Susan A. Sipos, Reg. No. 43,128, Kevin E. McDermott, Reg. No. 35,946; Rod S. Turner, Reg. No. 38,639; Robert C. Morriss, Reg. No. 42,910; Algis Anilionis, Reg. No. 36,995; Justin K. Holmes, Reg. No. 42,666; and Lauren T. Emr, Reg. No. 46, 139 each of them of HOFFMANN & BARON, LLP, 6900 Jericho Turnpike, Syosset, New York 11791; and Daniel A. Scola, Jr., Reg. No. 29,855; Salvatore J. Abbruzzese, Reg. No. 30,152; John Sopko, Reg. No. 41,321; Gloria K. Szakiel, Reg. No. 45,149; Mark E. Baron, Reg. No. 46,150; Ludomir A. Budzyn, Reg. No. 40,540; Christina L. Warrick, Reg. No. 45,690; Linda T. Parker, Reg. No. 46,046; Robert M. Rodrick, Reg. No. 27,086; Rohini K. Garg, Reg. No. 45,272; Joy I. Farber, Reg. No. 44,103; and Anna-Lisa Gallo, Reg. No. 50,279 each of them of HOFFMANN & BARON, LLP, 1055 Parsippany Boulevard, Parsippany, New Jersey 07054.

PLEASE SEND CORRESPONDENCE TO:

Ronald J. Baron, Esq.
HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, NY 11791

PLEASE DIRECT TELEPHONE CALLS TO:

Kevin E. McDermott
(516) 822-3550

DECLARATION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

SIGNATURE(S)

Full Name of Sole or First Inventor: Robert A. Kay

Country of Citizenship: USA

Residence Address: 16253 Incline Court, LaMirada, CA 90638

Post Office Address: same as above

Date: _____ Inventor's signature _____

Full Name of Second Joint Inventor: Larry K. Thomas

Country of Citizenship: USA

Residence Address: 130 Greenmore, Irvine, CA 92614

Post Office Address: same as above

Date: 3/28/02 Inventor's signature Larry Thomas

NOTE: All above spaces identifying inventors must be completed or deleted before any inventor executes this application

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